

REMARKS

Appreciation is hereby expressed to Examiner Chin for the interview so courteously conducted on October 23, 2007. In accordance with said interview, Claims 16 and 18 have been cancelled, and Claim 7 has been amended to more definitely set forth the invention and obviate the rejections. Support for the amendment of claim 7 is inherently provided in original Figures 1-5. The present amendment is deemed not to introduce new matter. Claims 7-10 and 12 remain in the application.

Reconsideration is respectfully requested of the rejection of claims 7 and 12 under 35 U.S.C. 102(b) as being anticipated by McVey (U.S. Patent No. 4,715,632).

The McVey references concerns a device for manually lifting ground or floor objects. In particular, as illustrated in Fig. 5, the device includes a pair of transversely spaced upright walls 10 bounded by an upper end 11 and a lower end 12. "The lower ends 12 of the spaced walls 10 are each provided with a row of inwardly protruding resilient fingers 17 projecting partially across the space separating the walls 10. The two rows of fingers 17 are adapted to engage beneath the ground or floor object. They are moved apart and together as the inner ends of the rows of fingers 17 slide over the exterior surfaces of an object is moved downwardly over it." (see column 2, lines 9-16)

Importantly, McVey states that "[t]he straight and coplanar nature of lower ends 12 also facilitates placement of the rows of fingers 17 beneath an object resting on the ground or floor surface, as generally illustrated in FIG. 6" (see column 2, lines 36-39). Thus, as clearly illustrated in Fig. 6, the fingers 17 act not to grip objects, but merely to

retain objects after the upright walls 10 have been urged apart to allow the entry of the objects therebetween.

In contrast, as now claimed in amended claim 7, the friction grip fireplace tool of the present invention comprises **“friction ridges disposed on the first straight portion from the first end to the second end thereof, and on the second straight portion from the first end to the second end thereof,** said friction ridges creating a non-piercing friction effect upon an object disposed within the inner perimeter of the open end of said open-jawed mouth when the first straight portion and second straight portion are urged apart by said object”. Base claim 7 has now been amended to clarify that the friction ridges of the fireplace tool of the present invention are disposed along the length of the first straight portion and second straight portion, enabling the unexpected gripping effect provided by the present invention. Such friction ridges, as now claimed herein, are clearly not provided by McVey.

McVey's equivalent of the straight portions of a v-shaped, flexible, open-jawed mouth is the “pair of transversely spaced upright walls 10” (see column 1, lines 63-64). Accordingly, the inner surface of the middle portions of those upright walls 10 of the McVey device would correspond to the “middle portions of the straight portions of the inner perimeter of the mouth”. As illustrated in Fig. 6, those surfaces of McVey contain no ridges or anything that could be construed as ridges, and no friction enhancing surface treatment of any kind. Therefore, the McVey device is clearly unable to provide the gripping effect achieved with the present invention.

While the walls of the McVey device are resilient and can flex outward to allow an object, e.g., a pine cone, to enter between the rows of fingers at the walls' lower ends,

as shown in Fig. 6, the McVey device is not designed to retain an object by a gripping force applied by the resilient walls. Rather, the McVey device merely retains an object solely by the support of the fingers beneath the object, and the outward flexing of the walls is merely to spread the fingers sufficiently for the object to enter.

In contrast to the fireplace tool claimed herein, an object big enough to be retained by a gripping force applied by the resilient walls of the McVey device would be too big to pass through the fingers (see Fig. 6). This assertion is supported by the teaching in McVey stating “[t]herefore, when the device is tilted forward as shown in Fig 7, the pinecone 22 or other objects lifted by the device will be freed to fall gravitationally between the front edges and into a waiting receptacle.” (see column 2, lines 63–66).

Further, as discussed with Examiner Chin during the interview, base claim 7 has now been amended to call for “an elongated connecting rod having an upper end and a lower end, said second end of said second straight portion being connected to said connecting rod at its lower end such that the closed end of said open-jawed mouth is directed toward a user of said fireplace tool”. It is believed that this configuration, which enables ease of gripping, handling and dropping of firewood, is neither taught nor suggested in any of the cited prior art references.

In view of the amendments to base claim 7 herein, as well as the deficiencies of the cited McVey reference pointed out above, it is respectfully submitted that the cited McVey reference fails to anticipate the claims herein. Thus, it is believed that the Examiner would be justified in no longer maintaining the rejection. Withdrawal of the rejection is accordingly respectfully requested.

Reconsideration is respectfully requested of the rejection of claims 7-9 and 12 under 35 U.S.C. 102(b) as being anticipated by Thomas (U.S. Patent No. 4,762,303).

Thomas discloses a lumber turning tool. Said lumber turning tool is a lever type tool which provides leverage for handling dimensional lumber, which is uniformly rectangular in cross-section. In particular, as illustrated in Fig. 1, a lever type tool 10 is provided having "two spaced apart claws 13 and 14 projecting in generally the same direction" (see column 2, lines 14-16). Claw 13 is substantially shorter than the other claw, claw 14, to "facilitate grasping of the member 17, as shown in FIG. 2, with full reception of the lumber portion 17a into space 16" (see column 2, lines 24-26).

As discussed with Examiner Chin during the interview, it is respectfully submitted that the mouth of the lumber turning tool of Thomas is not v-shaped, but rather C-shaped, with parallel jaw surfaces (see Figures 1 – 6; column 1, lines 29-33 and 38-44; and column 2, lines 26-27 and 36-39). Nothing in Thomas' patent suggests or depicts a v-shaped mouth. The C shape of the mouth of the Thomas device, with its parallel jaw surfaces, provides no means for a spring-like effect to grip and hold an object when the mouth is forced upon it, regardless of the resiliency of the material of the mouth. No spring-like gripping effect is depicted, described, or claimed for the Thomas device.

Further, importantly, it is respectfully submitted that the mouth of Thomas' device has no friction ridges as claimed herein. The Examiner identifies 13a and 14a from the Thomas figures as friction ridges. However, as shown in Figure 1, elements 13a and 14a are simply the tips of the jaws 13, 14 (referred to as "claws" by Thomas) of the mouth at its open end and are referred to as such in the text (col 2, lines 26-27 and 46-52). These tips 13a, 14a are not the equivalent of the friction ridges claimed in the

present application, as they exert no gripping action on objects held in the claws 13, 14. Further, there are no other elements that are equivalent to friction ridges, as the mouth of the Thomas device is in fact smooth around its entire inner perimeter.

In contrast, the fireplace tool of the present invention is a tool for gripping and lifting objects, such as burning logs, of a wide variety of shapes and sizes (not merely rectangular). The V shape of the mouth of the fireplace tool of the present invention provides a spring-like effect when engaging objects of widely varying sizes, such as fireplace logs, and maintains a grip on objects via the friction ridges claimed in claim 7 herein. Unlike the Thomas device, the fireplace tool of the present invention is not a leverage tool, and not a tool restricted to rectangular cross-sections.

Further, as discussed above in the response to the rejection based on McVey, Thomas fails to disclose **“friction ridges disposed on the first straight portion from the first end to the second end thereof, and on the second straight portion from the first end to the second end thereof, said friction ridges creating a non-piercing friction effect upon an object disposed within the inner perimeter of the open end of said open-jawed mouth when the first straight portion and second straight portion are urged apart by said object”**, as now claimed herein. Rather, that teaching or suggestion comes only from the present invention, and constitutes an important element or aspect thereof.

In view of the amendments to claim 7 herein, as well as the deficiencies of the Thomas reference discussed above, it is respectfully submitted that Thomas fails to anticipate the present invention as now claimed herein. Withdrawal of the rejection is accordingly respectfully requested.

Reconsideration is respectfully requested of the rejection of claim 10 under 35 U.S.C. 103(a) as being unpatentable over Thomas (U.S.P. 4,762,303).

Claim 10 is dependent upon base claim 7. The Thomas reference, in relation to base claim 7, is discussed in detail above. Although iron or steel are well known as durable materials, as discussed above, the structure of the Thomas device bears no resemblance to the claimed fireplace tool of the present invention. Importantly, as discussed above, Thomas fails to teach or suggest a fireplace tool having a unary, v-shaped, flexible open-jawed mouth having friction ridges disposed thereon in the manner claimed herein.

In view of such deficiencies with regards to base claim 7, it is believed that Thomas fails to render unpatentable dependent claim 10. Withdrawal of the rejection is accordingly respectfully requested.

The application is now believed to be in condition for allowance and early action and allowance thereof is accordingly respectfully requested. If there is any reason why the application cannot be allowed at the present time, it is respectfully requested that the Examiner call the undersigned at the number listed below to resolve any problems.

Respectfully yours,

TOWNSEND & BANTA

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I hereby certify that this facsimile transmission, consisting of an 11-page Amendment After Final, in U.S. patent application Serial No. 10/829,080, filed on April 22, 2004, is being facsimile transmitted to the U.S. Patent and Trademark Office (Fax no. 571-273-8300) on October 23, 2007.

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